

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN LINDKE,

Plaintiff,

Case No. 19-cv-11905

Hon. Matthew F. Leitman

v.

HON. CYNTHIA A. LANE, *et al.*,

Defendants.

/

ORDER (1) TERMINATING DEFENDANT’S MOTION TO DISMISS (ECF No. 34) WITHOUT PREJUDICE AS MOOT AND (2) GRANTING PLAINTIFF LEAVE TO FILE A THIRD AMENDED COMPLAINT

Currently pending before the Court are Plaintiff Kevin Lindke’s claims against Defendant Mat King as pleaded in the Second Amended Complaint. (*See* Sec. Amended Compl., ECF No. 21.) King moved to dismiss the claims against him in that pleading on March 31, 2020.¹ (*See* Mot. to Dismiss, ECF No. 34.)

During an on-the-record status conference held on March 22, 2022, Lindke indicated that in light of developments that occurred after the filing of his Second Amended Complaint, he wishes to file a Third Amended Complaint. The Court agreed to allow him to do so and therefore **GRANTS** him leave to amend to file that

¹ Lindke’s claims are brought against King in his official capacity as Sherriff of St. Clair County. The motion to dismiss was filed by King’s predecessor as Sherriff, Timothy Donnellon. (*See* Mot. to Dismiss, ECF No. 34.) The parties agree that King, as current Sherriff, is the proper Defendant in this action.

pleading. Lindke need not file his Third Amended Complaint until further order of the Court after the United States Court of Appeals for the Sixth Circuit issues its opinion in *Lindke v. Donnellson*, Sixth Cir. Case No. 21-2612.

Given the Court's decision to allow Lindke to file a Third Amended Complaint, King's currently-pending motion to dismiss directed at the claims against him in the Second Amended Complaint is effectively moot. The Court therefore **TERMINATES** that motion **WITHOUT PREJUDICE AS MOOT**. To be clear, while Lindke's claims against King in the Second Amended Complaint technically remain pending at this time, King need not file any response to those claims. Nor will the Court enter a default and/or default judgment against King for failing to file such a response. King retains any and all rights to raise any defenses he wishes to the Third Amended Complaint once that pleading is filed.

Accordingly, for the reasons explained above, **IT IS HEREBY ORDERED** as follows:

- Lindke is **GRANTED** leave to file a Third Amended Complaint;
- Lindke shall not file his Third Amended Complaint until further order of the Court following the Sixth Circuit's ruling in *Lindke v. Tomlinson*, Sixth Cir. Case No. 21-2612;

- King's motion to dismiss the claims against him raised in the Second Amended Complaint (ECF No. 34) is **TERMINATED WITHOUT PREJUDICE AS MOOT**; and
- The Court will schedule a status conference with the parties for approximately 45 days from now to discuss setting a schedule for the filing of the Third Amended Complaint.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: March 22, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 22, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126